Nos. 79-1890 and 79-1904

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CECIL D. ANDRUS, Secretary of the Interior, et al.,
Petitioners

v.

STATE OF ALASKA,
Respondent

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA,
Respondent

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT STATE OF ALASKA

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QUESTION PRESENTED

Whether revenues from federal oil and gas leases on reserved public lands in the Kenai National Moose Range (part of the National Wildlife Refuge System) are to be distributed according to the formula established by Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, which provides that 90 percent of such revenues are to be paid to the State of Alaska and 10 percent are to be covered into the United States Treasury, or pursuant to the formula established by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which allocates 25 percent of the revenues it governs to the county or counties in which the refuge is located (in this case, the Kenai Peninsula Borough) and reserves 75 percent for federal purposes related to the Act.

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BRIEF OF RESPONDENT STATE OF ALASKA

OPINIONS BELOW

The opinion of the court of appeals is reported at 611 F.2d 1210 (9th Cir. 1980). The opinion of the district court is reported at 436 F. Supp. 288 (D. Alaska 1977).

[1] The other petitioners in No. 79-1890 are the Secretary of the Treasury and the Comptroller General.

JURISDICTION

Respondent State of Alaska accepts the petitioners' statements of jurisdiction.

STATUTES INVOLVED

Respondent State of Alaska accepts the petitioners' statements of the statutes involved, with the following additions.

Prior to its amendment in 1964, the Wildlife Refuge Revenue Sharing Act (Section 401 of the Act of June 15, 1935), as then amended, 16 U.S.C. (1958 ed.) § 715s, provided in pertinent part:

> Sec. 401. Twenty-five per centum of all money received during each fiscal year from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges established under sections 715-715d, 715e, 715f-715k, and 715l-715r of this title or under any other law, proclamation, or Executive order, administered by the Fish and Wildlife Service of the United States Department of the Interior, shall be paid at the end of such year by the Secretary of the Treasury to the county or counties in which such refuge is situated, to be expended for the benefit of the public schools and roads in the county or counties in which such refuge is situated . . .

Section 3 of the Mineral Leasing Act for Acquired Lands of 1974, 30 U.S.C. § 352, provides in part:

> Sec. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C.,

sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof.

STATEMENT OF THE CASE

A. Proceedings Below

This case is comprised of consolidated lawsuits brought in the United States District Court for Alaska by the State of Alaska (hereafter "Alaska") and the Kenai Peninsula Borough (hereafter "Kenai"), an Alaska political subdivision similar to a county.[2] The suits were brought against the Secretary of the Interior and other federal officials (hereafter the "Federal Petitioners") for declaratory relief and writs of mandate. Alaska sought a judgment that revenues from oil and gas leases on the Kenai National Moose Range should be distributed pursuant to Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, under which Alaska would receive 90 percent of such revenues and the federal government would receive 10 percent. *See* Joint Appendix, pp. 8-15. Kenai sought a judgment that those revenues should be distributed pursuant to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, under which Kenai would receive 25 percent of such revenues

[2] Alaska has no political subdivisions known as "counties." The Alaska analogue to a county is called a "borough." See Alaska Const., art. X.

and the federal government would receive 75 percent. *See* Joint Appendix, pp. 16-24. Both Alaska and Kenai also sought writs of mandate to compel the Federal Petitioners to distribute the revenues in a manner consistent with their respective claims.

The two actions were consolidated. *See* Joint Appendix, pp. 25-26. Kenai thereafter intervened in Alaska's action; *see* Joint Appendix, p. 35, and filed an answer to Alaska's complaint, a counterclaim against Alaska, and a cross-claim against the Federal Petitioners. *See* Joint Appendix, pp. 36-49. The Federal Petitioners answered Alaska's complaint, *see* Joint Appendix, pp. 28-31, and Kenai's cross-claim. *See* Joint Appendix, pp. 50-53.

All parties moved for partial summary judgment [3] on the issue of which statutory scheme governs distribution of revenues from the oil and gas leases on the Kenai National Moose Range. After briefing and argument, the district court granted Alaska's motion and entered a judgment declaring that those revenues should be distributed pursuant to Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191.

Kenai and the Federal Petitioners appealed to the Court of Appeals for the Ninth Circuit which, after briefing and argument, affirmed the judgment of the district court.

These petitions for writs of certiorari followed.

B. Statement of Facts

The Kenai National Moose Range was established in 1941 when Executive Order No. 8979, 6 Fed. Reg. 6471 (1941), withdrew approximately two million acres of "public and nonpublic land" on the Kenai Peninsula in Alaska and reserved them for use as a refuge and breeding ground for moose.[4] In

[3] Other subsidiary issues were left for later resolution.

[4] On May 22, 1964, Public Land Order No. 3400, 29 Fed. Reg. 7094-7095 (1964) added approximately 40,115 acres of public lands to the Range.

Udall v. *Tallman,* 380 U.S. 1, 6 (1965), this Court held that Executive Order No. 8979 did not withdraw the lands in the Range from oil and gas leasing under the mineral leasing laws. Following issuance of leases on the Range in the mid-1950s, an exploratory well was drilled and oil was discovered in commercial quantities in July, 1957. *Id.* at 12.

Revenues from the leases within the Range were first received in fiscal year 1954, and have been received every year since. *See* Joint Appendix, p. 58. These revenues have been substantial, totalling more than $57 million between 1966 and 1976.[5] *See* Joint Appendix, p. 66.

Prior to 1976, such revenues were distributed pursuant to Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191.[6] *See* Joint Appendix, pp. 59-60. That statute provides that all moneys from leases of public lands [7] under the Act [8] are to be paid into the United States Treasury for periodic distribution. Such revenues from public lands in Alaska are to be

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[5] In response to Alaska's discovery request, the Federal Petitioners stated that records of revenues before 1966 "are not readily available." Joint Appendix, p. 59. However, pre-1966 revenues also appear to have been substantial. For example, in fiscal year 1964, oil and gas lease revenues from the Kenai National Moose Range totalled $3,813,290. Affidavit of Lynn A. Greenwalt, Appendix A to Federal Petitioners' Brief, p. 2a. Moreover, those leases were producing oil in 1959, and have been doing so every year thereafter. Joint Appendix, p. 55.

[6] Following the effective date of Section 9(d) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1608(d), the computation of Alaska's 90 percent share and the 10 percent Treasury share was made after deducting a 2 percent share for the Alaska Native Fund. Joint Appendix, p. 59.

[7] "Public lands" are lands of the public domain which have never been in private ownership. They are distinguished from "acquired lands" which are lands granted or sold to the United States by a State or citizen. See *Wallis* v. *Pan American Pet. Corp.,* 384 U.S. 63, 65 and n. 2 (1966).

[8] While public lands are leased under the Mineral Leasing Act, 30 U.S.C. 181 *et seq.,* acquired lands are leased under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.* See *Wallis* v. *Pan American Pet. Corp., supra.*

distributed 90 percent to Alaska and 10 percent to the Treasury.[9] The federal official making the decision to distribute the revenues in this manner was the Secretary of the Interior. *See* Joint Appendix, p. 61. The agency making the actual disposition of the funds was the Bureau of Land Management. *Id.*

Since 1976, however, the 90 percent share of the oil and gas revenues from the Kenai National Moose Range which previously had been paid to Alaska has been placed in an escrow account.[10] None of these funds have been distributed to Alaska.

This departure from the pre-1976 administrative practice resulted from a 1975 inquiry from the Director of the United States Fish and Wildlife Service to the Solicitor of the Department of the Interior. He asked whether an amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, 11 years earlier in 1964, required that oil and gas revenues from public lands in wildlife refuges be distributed pursuant to that statute rather than Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. Under the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, 25 percent of the revenues received would be distributed to the county or counties in which the refuge was located; the remaining 75 percent would then be available for refuge management purposes.[11]

Prior to the 1964 amendment referred to by the Director of the Fish and Wildlife Service, the Wildlife Refuge Revenue

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[9] Under Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, revenues from leases of acquired lands are distributed in the same manner as nonmineral receipts from those lands.

[10] This fund now contains more than $23 million, including small sums from other public land wildlife refuges. See Federal Petitioners' Brief, p. 4 n. 4.

[11] Under subsequent amendments to the Act, net receipts in excess of the amount required for distribution to counties are to be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges.

Sharing Act, 16 U.S.C. (1958 ed.) § 715s, governed distribution of revenues from "the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges." More than 20 years prior to its amendment, the Comptroller General ruled that revenues from oil and gas leases in wildlife refuges were not included in this listing of revenues subject to distribution under the statute. Comp. Op. B-24128, 21 Comp. Gen. 873 (1942).

The 1964 amendment, P.L. 88-523, 78 Stat. 701, amended the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, in a number of respects. New provisions were added, differentiating for the first time between public lands and acquired lands with respect to the formula for computing the amount of the payments to counties. Counties containing public land refuges continued to receive 25 percent of the revenues from those public lands. Counties containing acquired land refuges were given an option: 25 percent of the revenues from those lands or ¾ of 1 percent of the acquisition cost of the lands. In addition, without discussion in the legislative history, the word "minerals" was added to the list of revenue sources subject to distribution under the statute.

In response to the Director of the Fish and Wildlife Service's request, the Solicitor concluded that the 1964 amendment "irreconcilably" conflicted with Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, on which the then-existing administrative practice was based, and that the more recent Act controller. *See* Appendix D to Federal Petitioners' Petition, pp. 26a-33a. The Comptroller General concurred in the Solicitor's opinion. 55 Comp. Gen. 117 (1975); *see* Appendix E to Federal Petitioners' Petition, pp. 34a-41a. In response to a request by the Alaska Attorney General, *see* Joint Appendix, pp. 94-103, the Comptroller General affirmed his original decision. *See* Appendix F to Federal Petitioners' Petition, pp. 421-58a.

These consolidated lawsuits followed.

SUMMARY OF ARGUMENT

1. The question presented is which of two statutes —Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, or the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s—governs distribution of the revenues from federal oil and gas leases on the public lands withdrawn for the Kenai National Moose Range.

Those leases were issued pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.*, which governs mineral leasing of the public lands and specifically authorizes the leasing of oil and gas deposits. Under the express language of Section 35 of the Act, 30 U.S.C. § 191, resultant oil and gas revenues from leases of public lands are to be distributed as provided therein.

The Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, governs distribution of revenues received from the sale or other disposition of "minerals" on wildlife refuges. The term "minerals" is not unambiguous, and may or may not include oil and gas.

Accordingly, if this case is to be resolved under the "plain meaning" rule of statutory construction, the express terms of the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.*, and particularly the revenue sharing provisions of Section 35, 30 U.S.C. § 191, control the distribution of the oil and gas lease revenues from the Kenai National Moose Range.

2. An implied repeal of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, by the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, must be found before distribution of oil and gas revenues from public lands in refuges are governed by the latter statute. The legislative history of the 1964 amendment shows that Congress did not intend it as an implied repeal of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. Moreover, the provisions of Section 35 and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, after its amendment in 1964, may be reconciled.

Construing the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as impliedly repealing Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, as it applies to public lands in wildlife refuges, would be at variance with the legislative policy underlying the 1964 amendment.

3. For 11 years after the amendment of the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, the Secretary of the Interior continued to pay 90 percent of the oil and gas lease revenues from the public lands in the Kenai National Moose Range to the State of Alaska under Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. In continuing the pre-amendment practice without change (and without question for 11 years), the Secretary demonstrated that both Congress and the appropriate officials in his department assumed that the 1964 amendment had no effect on the distribution of the Moose Range revenues.

This contemporaneous administrative construction is more indicative of the Congressional intent underlying the 1964 legislation, than the later rulings of the Solicitor of the Interior and the Comptroller General, made long after the 1964 amendment and not particularly persuasive.

4. The policy of sharing mineral leasing revenues from public lands with the States in which those lands exist, embodied in Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, has existed for 60 years. The 1976 amendment to Section 35 which increased the share of States other than Alaska from 37½ percent to 50 percent, P.L 94-579, 90 Stat. 2770-2771, indicates that this Congressional policy may be even stronger now than it was 60 years ago.

In light of this recently strengthened Congressional policy, this Court should be reluctant to construe the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as creating an exception to that policy under which officials of the Executive Branch may alter it by withdrawing public lands for wildlife refuges, particularly in the absence of a clear

Congressional understanding that such an exception was being created.

5. The Congressional policy of distributing 90 percent of mineral leasing revenues from public lands in Alaska to that State, embodied in Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and incorporated in Section 28(b) of the Alaska Statehood Act, 72 Stat. 351, was deliberately made one of the terms of the Statehood Compact under which Alaska was admitted to the Union to remedy what Congress perceived as a problem of excessive federal withdrawals in Alaska.

It would be particularly anomalous for this Court to construe the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as taking public lands in Alaska out of the distribution formula of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, upon withdrawal for wildlife refuge purposes when that was the very type of federal Executive Branch action which Congress sought to remedy by giving Alaska 90 percent of the mineral revenues from those lands.

ARGUMENT

1. Mechanical application of the "plain meaning" rule of statutory construction results in the distribution of oil and gas revenues from public lands in the Kenai National Moose Range being governed by Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and not the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s.

The question in this case is whether Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, or the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, governs distribution of the revenues from federal oil and gas leases on the public lands of the Kenai National Moose Range. As in any case involving the application and construction of statutes, the starting point must be the language of the Acts themselves. *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 337 (1979).

Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, by its terms, governs distribution of "[a]ll money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act," referencing the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* That Act expressly authorizes the disposition of both "oil" and "gas," as well as "lands containing such deposits owned by the United States," with certain express exceptions not relevant here. Section 1, 30 U.S.C. § 181. As the Federal Petitioners note in their Brief at p. 23 and n. 23, it was early decided that the Act applied only to "public lands."

However, it was never determined that the Act did not apply to such lands withdrawn for wildlife refuges, and it cannot be seriously questioned that the oil and gas leases on the Kenai National Moose Range were issued pursuant to it.[12]

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[12] The Federal Petitioners argue at length that the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, may never have been intended to apply to public lands in wildlife refuges, and that leasing of such lands may have been authorized by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s. Federal Petitioners' Brief, pp. 22-27. However, they ultimately concede that "the alternative view" that the Mineral Leasing Act covers wildlife refuges is "more likely." *Id.*, p. 27. It should be noted that the materials cited by the Federal Petitioners, Brief, pp. 25-26 nn. 28-30, are, at most, equivocal on the point. For example, Op. Sol. Interior Dept. M-34516 (the "Cohen memo" of August 5, 1946), states that "authority . . . to grant applications for the drilling for oil and gas on *public domain* lands is acknowledged." Joint Appendix, p. 70 (emphasis in original). Only the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, could have conferred such authority. The July 6, 1951 memorandum by the Chief Counsel of the Fish and Wildlife Service found it unnecessary to consider the question. Joint Appendix, pp. 88-89. The August 14, 1951 letter from the Administrative Assistant to the Comptroller General, Joint Appendix, 73-81, was an attempt to get the Comptroller General to recede from his earlier opinion of March 18, 1942, 21 Comp. Gen. 873 (1942), that Section 401 of the Act of June 15, 1935 (the Wildlife Refuge Revenue Sharing Act), did not encompass oil and gas activities. The Comptroller General was not persuaded. See Comptroller General's letter of October 10, 1951, Joint Appendix, pp. 82-86,

(footnote continued on following page)

Congress so noted in 1958.[13] That premise underlies the Deputy Solicitor of Interior's decision in *James K. Tallman et al.*, 68 I.D. 256 (1965). Finally, this Court adopted a similar view in *Udall* v. *Tallman*, 380 U.S. 1 (1964).

Summarizing, the "plain meaning" of Sections 1 and 35 of the Mineral Leasing Act, 30 U.S.C. §§ 181 and 191, fully encompasses" [a]ll money received" from the "oil" and "gas" leases on the "public lands" of the Kenai National Moose Range.

On the other hand, the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, by its terms, governs distribution of "all revenues received . . . from the sale or other disposition of . . . minerals . . . in connection with the operation and management of " refuges. Both the Federal Petitioners and Kenai argue that the "plain meaning" of this statutory language compels the conclusion that this statute governs distribution of the oil and gas lease revenues from the Kenai National Moose Range. Federal Petitioners' Brief, pp. 13-17; Kenai's Brief, pp. 19-23.

However, as this Court noted some years ago, the term "mineral" is used in many different senses, and dictionary definitions are not helpful in ascertaining its significance in a

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(footnote continued from previous page)

at p. 85. (Indeed, the Comptroller General still held this opinion as late as June 11, 1976. Comp. Op. B-118678, Appendix F to Federal Petitioners' Petition, pp. 42a-58a, at p. 46a.) The 1956 testimony by counsel for the Fish and Wildlife Service quoted in the Federal Petitioners' Brief, p. 26 n. 29, indicates only that the 1935 Act would authorize oil and gas leasing only if the Mineral Leasing Act did not—i.e., only if the withdrawal for the refuge withdrew the lands from the mineral leasing laws. Finally, even the Federal Petitioners find only presumptive support in H.R. Rep. No. 1941, 84th Cong., 2d Sess. 3-4 (1956).

[13] See Hearings before Senate Committee on Interior and Insular Affairs on H.R. 8054, 85th Cong., 2d Sess. (1958), p. 77, and S. Rep. No. 1720, 85th Cong., 2d Sess. (1958), p. 5.

given case.[14] *Northern Pacific Ry. Co.* v. *Soderberg,* 188 U.S. 526, 530 (1903).

On the question whether the term "minerals" includes oil and gas, one leading text has noted that there appear to be four different positions:

> (1) the term minerals includes oil and gas unless other language in the instrument so restricts the definition of the term as to exclude these natural resources;
>
> (2) the term minerals does not include oil and gas unless other language in the instrument indicates that the term has been used with intent to include these natural resources;
>
> (3) there is a rebuttable presumption that the term minerals includes (or does not include) oil and gas; and
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> (4) a grant or reservation of minerals is ambiguous as to whether oil and gas are included and hence extrinsic evidence of intent is admissible.

1 Williams and Meyers, *Oil and Gas Law* (1978 Ed.) § 219, p. 263. Another leading textwriter has noted that oil and gas are not "minerals" in a true scientific sense, although he notes that most courts hold that they are "minerals" in the broad general sense in which the term is usually employed. 1 Summers, *Oil and Gas* (2d Ed. 1954) § 2.

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[14] As but one example, the House Committee on Public Lands left the word "minerals" in an amendment to H.R. 3022, the bill which ultimately became the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.,* on the "understanding," reached with representatives of the Department of the Interior, "that the word 'mineral,' in this instance, should apply only to helium, fissionable materials, or any other mineral absolutely essential to the defense of the country, but excluding the minerals specifically mentioned in the bill." H.R. Rep. No. 550, 80th Cong., 1st Sess. (1947), reprinted at 1947 U.S. Code & Cong. Admin. News, 1661, 1663.

All this apparent confusion regarding the scope of the word "minerals" prompted one student commentator to suggest that the soundest approach is to regard it as ambiguous in all contexts. Note, 34 TEXAS L. REV. 1102 (1956). In other words, the term "minerals" has no "plain meaning."

Accordingly, if resolution of this case turns on the application of the "plain meaning" rule to the two statutes involved here,[15] distribution of the oil and gas revenues from federal leases on the public lands of the Kenai National Moose Range must be governed by Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. Such revenues do not come within the purview of the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, unless and until the word "minerals" in that statute is construed to include oil and gas.

2. Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, controls distribution of the oil and gas lease revenues from the public lands in the Kenai National Moose Range unless the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, repealed it by implication; the legislative history of the 1964 amendment shows that no implied repeal was intended by Congress.

Since its enactment in 1920, Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, has controlled distribution of oil and gas lease revenues on public lands, including those in wildlife refuges. *See* Part 1, *supra.*

As originally enacted, and up until its amendment in 1964, the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. (1958 Ed.) § 715s, governed revenues "from the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and

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[15] The fact that there are two arguably conflicting statutes involved here distinguishes this case from the normal "plain meaning" case. See, *e.g., United States* v. *Clarke,* 445 U.S. 253 (1980).

from other privileges on refuges." Early on, the Comptroller General ruled that this language did not encompass revenues from oil and gas development. Comp. Op. B-24128, 21 Comp. Gen. 873 (1942).

In 1947, this result was modified when the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 315 *et seq.*, both authorized the leasing of such lands,[16] Section 3, 30 U.S.C. § 352, and directed that resultant revenues be distributed in the same manner as nonmineral revenues from those lands. Section 6, 30 U.S.C. § 355. Accordingly, oil and gas revenues from acquired lands in wildlife refuges became subject to distribution under the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, not by the terms of that statute but by the express direction of Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 355.[17]

In other words, the distribution of oil and gas lease revenues is governed by the terms of the Act which authorized the leasing of the lands in the first place. For leases on public lands, including those in wildlife refuges, revenue distribution necessarily is governed by Section 35 of the Mineral Leasing Act (the Act authorizing the leasing of those lands), 30 U.S.C. § 191.[18]

However, it is suggested that a 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, changed this result, at least insofar as oil and gas revenues from

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[16] It had earlier been held that the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, did not authorize the leasing of acquired lands. 40 Op. Atty. Gen. 9 (Jan. 3, 1941).

[17] See Comptroller General's October 10 1951 letter, Joint Appendix, pp. 82-86, at p. 84.

[18] As noted in Part 3, *infra*, the administrative practice of the Department of the Interior followed this analysis until this dispute arose in 1976.

public lands in wildlife refuges are concerned. That 1964 amendment, P.L. 88-523, 78 Stat. 701-702, added the world "minerals" to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s.[19]

To reach this result, it must be found that the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, impliedly repealed Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, at least as far as public lands in wildlife refuges are concerned. Such "repeals by implication are not favored." *Morton* v. *Mancari,* 417 U.S. 535, 549 (1974), quoting *Posadas* v. *National City Bank,* 296 U.S. 497, 503 (1936). "In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." *Morton* v. *Mancari, supra,* at 550 (citation omitted). Here, there has been no affirmative showing of an intention to repeal; indeed, the legislative history shows that Congress did not intend the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, to change the law in this respect. Further, Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, are easily reconcilable.[20]

A number of bills were introduced in the 87th Congress to amend the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s.[21] There is some evidence that members of both houses of Congress contemplated that these bills, as originally introduced, would affect only acquired lands and have absolutely

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[19] It also added "leases for public accommodations or facilities . . ." to the list.

[20] This is precisely what the district court and the court of appeals accomplished.

[21] S. 2138, S. 2678, S. 2770, S. 2927 and S. 3201, 87th Cong.; H.R. 10714, H.R. 11525, H.R. 11535, H.R. 12143, H.R. 12144 and H.R. 12145, 87th Cong.

no impact on public lands in refuges.[22] This view was shared by representatives of the Department of the Interior.[23]

None of these bills, however, made any reference to "minerals." The first reference to "minerals" was in a proposed draft amendment accompanying a June 20, 1962 letter from Assistant Secretary of the Interior Briggs to Senator Magnuson, chairman of the Senate Committee on Commerce.[24] In his letter, Mr. Briggs did not point out that the word "minerals" would be added to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, if the proposal was adopted by Congress. Instead, before outlining in some detail some of the changes which would be made, he stated that "our draft contains various perfecting and other provisions that we consider, from our study of this matter, to be desirable." As the Federal Petitioners note, presumably the addition of the world "minerals" was one of these "perfecting" provisions.

After intimating that the proposed draft amendment would revise "the authority and procedure concerning revenue sharing" under the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, he recited the revenue sources included in that statute at that time. He continued:

> With minor exceptions, receipts collected from both reserved public lands and acquired lands in the

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[22] See, *e.g.*, S. Rep. No. 1919, 87th Cong., 2d Sess. (1962), p. 1; Hearings before the Subcommittee on Fisheries and Wildlife conservation of the Committee on Merchant Marine and Fisheries, House of Representatives, 87th Cong., 2d Sess., on H.R. 10714, H.R. 11525, H.R. 11535, H.R. 12143, H.R. 12144 (H.R. 12145 identical bill) (1962) (hereafter "1962 House Hearings"), p. 33.

[23] See, *e.g.*, Hearings before a Subcommittee of the Committee on Commerce, United States Senate, 87th Cong., 2d Sess., on S. 2138, S. 2678, S. 2770, S. 2927, and S. 3201 (1962) (hereafter "1962 Senate Hearings"), p. 57; 1962 House Hearings, pp. 72 and 75-76.

[24] See S. Rep. No. 1919, 87th Cong., 2d Sess., pp. 13-17, at p. 15. An identical letter was sent to Congressman Bonner, Chairman of the House Committee on Merchant Marine and Fisheries, on June 22, 1962. See H.R. Rep. No. 2499, 87th Cong. 2d Sess. (1962), pp. 4-6.

> refuge system are subject to the provisions of section 401 of the 1935 act. Where refuges have been established on lands that are under the primary jurisdiction of other Federal agencies, such as the Corps of Engineers and the Bureau of Reclamation, and *where game ranges are jointly administered with the Bureau of Land Management, the revenues from such land are generally disposed of in accordance with other laws.*

(Emphasis added.)

For purposes of oil and gas leasing, "Alaska wildlife areas" [25] were treated the same as "game range lands." *See* 43 CFR 192.9(b)(3) (1959 Ed.). Under that regulation, oil and gas leases on such lands would be issued only after the Bureau of Land Management and the United States Fish and Wildlife Service had agreed on which lands would not be leased. With respect to the Kenai National Moose Range, such agreement was announced on July 24, 1958. *See* 23 Fed. Reg. 5883. The Bureau of Land Management administered the revenues from the leases on the Kenai National Moose Range, as directed by the Secretary of the Interior. *See* Joint Appendix, p. 61. The Bureau distributed those revenues in accordance with Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, *see* Joint Appendix, pp. 59-60, or, in the words of Mr. Briggs, "in accordance with other laws."

Once it is understood that oil and gas lease revenues from the public lands in the Kenai National Moose Range were one of the exceptions to distribution under the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s,[26] the addition of the

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[25] Defined in 43 CFR 192.9(a)(4) (1959 Ed.) in such a way as to include the Kenai National Moose Range.

[26] A view held by the Comptroller General as late as 1976. See Appendix F to Federal Petitioners' Petition, pp. 42a-58a, at p. 46a. In light of this, it is somewhat surprising that the Comptroller General,

(footnote continued on following page)

word "minerals" to that statute as a mere "perfecting" provision without discussion is not remarkable. Moreover, it is entirely consistent with the testimony of the Department of the Interior witnesses who testified on the proposed amendment and conforms perfectly with Congressional expectations.

For example, Daniel H. Janzen, Director of the Bureau of Sport Fisheries and Wildlife, U.S. Fish and Wildlife Service, Department of the Interior, testified that sharing oil and gas revenues with counties[27] resulted in windfalls; nonetheless, the Department of the Interior proposal retained the 25 percent sharing formula for receipts from public lands in refuges.[28] If Interior's proposal—adding the word "minerals"—was to make oil and gas revenues on public land refuges subject to distribution under the 25 percent formula, revenues not previously subject to such distribution, the possibility of such windfalls resulting would be increased. Furthermore, he testified that he expected no increase in oil and gas receipts subject to such distribution[29]; if addition of the word "minerals" subjected oil and gas revenues from public lands in refuges to such distribution, the Kenai National Moose Range revenues would have been added to those already covered.

Finally, S. Rep. No. 1919, pp. 4-10, included a table showing the payments to counties under the then-existing law as well as payments under the proposed bill. On p. 10, Kenai

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(footnote continued from previous page)

one of the federal Petitioners here, now joins in the suggestion that the oil and gas revenues from the public lands in the Kenai National Moose Range were governed by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s, prior to its amendment in 1964. See Federal Petitioners' Brief, p. 27.

[27] Such revenues were from leases on acquired lands in refuges, issued under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.* Under Section 6 of that Act, 30 U.S.C. 355, those revenues were distributed under the formula set out in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. 715s.

[28] 1962 Senate Hearings, p. 55; 1962 House Hearings, p. 68.

[29] 1962 House Hearings, p. 76.

revenues are listed as $7,211. Although n. 2 to the table indicates that payments from public lands are not included in the estimates under the proposed bill, a "Statement Concerning Receipts and Payments to Counties from Wildlife Refuges Containing Reserved Public Lands" which follows the table indicates that estimated Kenai revenues under the proposed bill would still equal $7,211.[30]

No bill passed the 87th Congress, and several similar bills were introduced in the 88th Congress.[31] All but one of these bills[32] included the word "minerals"[33] in the new list of revenue sources to be governed by the amended Wildlife Revenue Sharing Act, 16 U.S.C. § 715s.

Again, representatives of the Department of the Interior noted that one exception to the revenues covered by the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, were those from lands jointly administered by the Bureau of Land Management.[34] Committee reports in both houses indicated that 1963 payments from the Kenai National Moose Range would total $1,768 under both the existing law and the proposed amendment.[35]

A number of Congressmen were quite concerned that refuge receipts would be insufficient to make the additional

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[30] The Federal Petitioners must have inadvertently overlooked this "Statement" when they assert that this table "specifically avoided any indication of the anticipated payments to counties from 'public land' areas under the proposed amendment." Federal Petitioners' Brief, p. 19 n. 16.

[31] S. 179, S. 1363, S. 1720 and S. 2498, 88th Cong.; H.R. 1127, H.R. 2393, H.R. 5996, H.R. 9030 and H.R. 11008, 88th Cong.

[32] S. 1720, 88th Cong.

[33] As well as "leases for public accommodations or facilities. . . ."

[34] See Assistant Secretary of the Interior John A. Carver's June 7, 1963 letter to Congressman Bonner, H.R. Rep. No. 1753, 88th Cong., 2d Sess. (1964), pp. 13-19, at p. 14; Assistant Secretary of the Interior Briggs' July 15, 1963 letter to Senator Magnuson, S. Rep. No. 1096, 88th Cong., 2d Sess. (1964), pp. 24-29, at p. 14.

[35] S. Rep. No. 1096, 88th Cong., 2d Sess. (1964); H.R. Rep. No. 1753, 88th Cong., 2d Sess. (1964).

payments which would be required under the amendment.[36] At no time did the Department of the Interior witnesses suggest to the committee that the amendment would provide a new source of revenue, even though 1964 revenues from the Kenai National Moose Range totaled $3,813,290 (see n. 5 *supra*), and subjecting them to distribution under the amended Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, would have alleviated any Congressional concern in this regard. Instead, they assured the Congressmen that the existing revenue sources were sufficient.[37] The only oil and gas revenues then distributed pursuant to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, were those from the acquired lands of the Delta Refuge in Plaquemines Parish, Louisiana.[38] Members of the committee explicitly stated that they were relying on the figures supplied by the Department of the Interior witnesses.[39]

All of this testimony, and the resultant expressions of Congressional understanding, bear out the repeated statements by spokesmen for the Department of the Interior that payments

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[36] See Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, House of Representatives, 88th Cong., 2d Sess., on H.R. 1127, H.R. 2393, H.R. 5996, H.R. 9030, H.R. 11008 (hereafter "1964 House Hearings"), pp. 48-53, 75-77, 81-98.

[37] See 1964 House Hearings, pp. 53, 83, 86.

[38] See 1964 House Hearings, p. 68.

[39] See S. Rep. No. 1096, 88th Cong., 2d Sess. (1964), p. 3; 1964 House Hearings, pp. 81, 83, 84, As it turned out, however, those witnesses were wrong. By 1976, the funds in the refuge revenue sharing account were insufficient by 27 percent. See S. Rep. No. 95-1174, 95th Cong., 2d Sess. (1978), reprinted at 4 [1978] U.S. Code and Cong. Admin. News 2979, at p. 2980. This may be the reason for the Director of the Bureau of Fish and Wildlife Service's 1975 inquiry whether the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, made oil and gas revenues from public lands in wildlife refuges subject to distribution under that statute. Such a result would add several million dollars to the fund annually, easily covering the shortfall the fund was experiencing.

to counties from reserved public lands after the amendment would be the same as under the previous law.[39a]

Alaska submits that the foregoing demonstrates that Congress never intended the addition of the word "minerals" to the list of revenue sources in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, to encompass oil and gas revenues from public lands, previously governed by Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. This case is analogous to *Train* v. *Colorado Public Interest Group,* 426 U.S. 1 (1976), where this Court held that the term "radioactive materials" in the 1972 amendments to the Federal Water Pollution Control Act, 86 Stat. 816, did not include "source, by-product, and special nuclear materials" subject to Atomic Energy Commission regulation. Given the long-standing legislative policy of sharing public land mineral revenues with States,[40] this Court's comment in *Train* seems particularly appropriate: "Far from containing the clear indication of legislative intent that we might expect before recognizing such a change in policy, the legislative history reflects, on balance, an intention to preserve the pre-existing regulatory plan." 426 U.S. at 24.

To reconcile the two statutes involved, Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, all one must do is construe the word "minerals" in the latter statute as encompassing those minerals which are not specifically addressed elsewhere (as far as revenue distribution goes). In terms of oil and gas, the word "minerals" in the Wildlife Revenue Sharing Act, 16 U.S.C. § 715s, would then include oil and gas from acquired lands by virtue of Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 355; however, it would not include

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[39a] See H.R. rep. No. 1753, 88th Cong., 2d Sess. (1964), pp. 1-2, 11-12; Hearings on S. 179, S. 1363, S. 1720 and S. 2498 before the Senate Committee on Commerce, 88th Cong., 2d Sess. (1964), pp. 56 and 58; 1964 House Hearings, pp. 68 and 84; 1962 House Hearings, pp. 70, 76 and 83.

[40] See Parts 4 and 5, *infra.*

oil and gas from public lands in wildlife refuges because Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, specifically mandates a different distribution scheme for revenues from that source. This eminently sensible solution, harmonizing the two statutes, avoiding any repeal by implication, and conforming in all respects with the legislative history and Congressional expectations underlying the 1964 legislation, was adopted by both the district court and the court of appeals below, and properly so.

Finally, it should be noted that construing the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. §715s, as making oil and gas revenues from public lands in refuges subject to its distribution formula could defeat the avowed Congressional purpose in passing the legislation in the first place. It is not disputed that the primary purpose of the 1964 amendment was to remove State opposition to placement of additional lands in wildlife refuges. *See* Federal Petitioner's Brief, p. 19 n. 15. It certainly can be anticipated that States will object to the withdrawal of additional public lands for wildlife refuges if such a withdrawal might impact State revenues by taking them out of the coverage of Section 35 of the Mineral Leasing Act, 30 U.S.C. §191. The Court should not adopt a construction of the word "minerals" in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. §715s, which would lead to such an unreasonable result at variance with the legislative policy underlying the 1964 amendment. *United States* v. *American Trucking Associations,* 310 U.S. 534 (1940).

3. The contemporaneous and continuous practice of the Department of the Interior in distributing the oil and gas lease revenues from the Kenai National Moose Range pursuant to Section 35 of the Mineral Leasing Act, 30 U.S.C. §191, is indicative of the Congressional intent underlying the 1964 amendment.

This Court has stated on many occasions that the contemporaneous construction of statutory provisions by the administrative officers charged with making them work is entitled to

deference. *Udall* v. *Tallman,* 380 U.S. 1 16 (1965). Here, there is no question that the Department of the Interior continued the pre-1964 practice of distributing the oil and gas revenues from leases of the public lands in the Kenai National Moose Range pursuant to Section 35 of the Mineral Leasing Act, 30 U.S.C. §191, for 11 years after the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. §715s, and that this was done at the direction of the Secretary of the Interior.[41]

This practice was not questioned by anyone—Congress, officials of the Executive Branch, or counties—until 1975. At that time, contemporaneously with a 27 percent shortfall in the refuge revenue sharing account,[42] the Director of the Fish and Wildlife Service raised the issue. Both the Federal Petitioners and Kenai now assert that the administrative interpretations by the Solicitor of the Department of the Interior and the Comptroller General which followed are entitled to deference. Federal Petitioners' Brief, pp. 32-33; Kenai's Brief, pp. 30-31.

However, it is *contemporaneous* administrative constructions, when the new statutory scheme is untried and new, to which the most deference should be paid. *Udall* v. *Tallman, supra.* This is particularly true where, as here, the administrators participated in drafting the language at issue and made their views known to Congress in committee hearings. *Zuber* v. *Allen,* 396 U.S. 168, 192 (1969). Alaska submits that this is the archetypical case contemplated by Mr. Justice Blackmun, concurring in the judgment in *SEC* v. *Sloan,* 436 U.S. 103, 126 (1978), when he stated that the doctrine of contemporaneous construction

> focuses on the "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion," [*Norwegian Nitrogen Co.* v. *United States,* 288 U.S. 294 (1933)] precisely because their action is itself evidence of

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[41] See Joint Appendix, p. 61.

[42] See n. 39, *supra.*

> assumptions—perhaps unspoken by either the administrators or Congress—brought to a regulatory problem by all involved in its solution. Indeed, common experience tells us that it is assumptions which everyone shares which often go unspoken because their very obviousness negates the need to set them out.

That is precisely the case here.

To defer to the later interpretations by the Solicitor and the Comptroller General would be to misinterpret the policy of giving deference to administrative construction. There can be no question that the courts are the final authorities on issues of statutory construction. *Volkswagenwerk Aktiengesellschaft* v. *F. M. C.*, 390 U. S. 261 (1968). Contemporaneous administrative constructions are helpful aids to a court, long after the legislation was enacted, in determining what was intended at the time.

Petitioners appear to argue that the rule is that courts should defer to whatever administrative interpretation suits the agency's fancy at that particular point in time. This cannot be the law. Administrative construction of a statute "is only one input in the interpretational equation." *Zuber* v. *Allen, supra,* at 192. It should not be used blindly to validate a long-after-the-fact administrative reinterpretation of a statute which the agency helped draft in the first place.

The Court should note the mischief which might result from adoption of the Petitioners' argument on this issue. After assisting Congress in drafting a statute and representing that certain results would follow, the agency would "construe" the statute in a contrary manner and assert that its new views are entitled to deference. Such is not the law. *Cf., United States* v. *Leslie Salt Co.*, 350 U. S. 383 (1956)(Treasury not permitted to reinterpret terms "debentures" and certificates of indebtedness").

To the extent that this Court should give deference to an administrative interpretation of a statute, it should do so because that interpretation is indicative of the Congressional intent underlying the statute. Where there are two conflicting interpretations, one contemporaneous and one long-after-the-fact, the contemporaneous interpretation should be given deference, as it is more likely indicative of the Congressional intent underlying the satute. This is true whether the contemporaneous interpretation is a formal legal analysis or, as here, a purely practical construction.

Under both the established principle of deference to administrative construction and policy considerations, the only administrative interpretation indicative of the legislative intent underlying the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U. S. C. §715s, and therefore entitled to deference, was the Department of the Interior's pre-1976 practice of distributing the oil and gas lease revenues from the public lands of the Kenai National Moose Range Pursuant to Section 35 of the Mineral Leasing Act, 30 U. S. C. §191.

4. In light of the long-standing Congressional policy of sharing mineral revenues from public lands with the States in which those lands are located, recently reemphasized, this Court should be reluctant to find an exception to that policy under which officials of the Executive Branch may alter it by withdrawing public lands for wildlife refuges.

The Congressional policy of sharing mineral revenues from public lands with the States in which those lands are located has existed for 60 years, since the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*, was enacted in 1920. Under Section 35 of the Act as originally enacted, 41 Stat. 450, the States within which the lands were located were to receive 37½ percent of the revenues, the Federal Reclamation Fund would receive 52½ percent, and the Treasury would receive 10 percent.

In 1976, Section 35 was amended by P.L. 94-579, 90 Stat. 2770-2771. In this amendment, Congress not only continued its

previous policy of sharing public land mineral revenues with the States, it actually strengthened it by increasing the share of States other than Alaska to 50 percent.

In light of this long-standing Congressional policy, recently restated and strengthened, Alaska submits that this Court should be reluctant to adopt a rule of law in this case which would permit officials of the Executive Branch to alter that policy by withdrawing public lands for wildlife refuges. This is particularly true in light of the legislative history discussed in Part 2, *supra,* which makes clear that Congress did not intend the 1964 amendment to the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, to impliedly repeal Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, as it applies to public lands in wildlife refuges. "A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, 'excepting as a different purpose is plainly shown." *United States* v. *American Trucking Associations,* 310 U.S. 534, 544 (1940), quoting *Boston Sand & Gravel Co.* v. *United States,* 278 U.S. 41, 48 ( ).

5. Congress deliberately made Alaska's 90 percent share of mineral revenues from public lands in Alaska under Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, one of the terms of the Statehood Compact under which Alaska was admitted to the Union to remedy the problem of excessive federal withdrawals in Alaska; it would be anomalous for this Court to hold that federal withdrawals for wildlife refuges remove the withdrawn lands from the distribution formula of Section 35.

As originally enacted in 1920, the Territory of Alaska was excluded from the revenue sharing provisions of Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191. In 1947, however, Section 35 was amended to provide that the Territory of Alaska also was to receive a 37½ percent share of the mineral revenues from the public lands within the Territory. Act of May 27,

1947, 61 Stat. 119. In 1957, Section 35 was further amended to provide that the Territory would receive an additional 52½ percent share of such revenues, the share that had been earmarked for the Federal Reclamation Fund. Section 2(g), Act of July 10, 1957, 71 Stat. 282. The reason for this amendment was that the Territory of Alaska was not covered by the Federal Reclamation Fund, and Congress perceived this as a discrimination which it sought to remove. *See* S. Rep. No. 475, 85th Cong., 1st Sess. (1957), reprinted at 2 [1957] U.S. Code & Cong. Admin. News 1294. In Section 28(b) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 351, the new State of Alaska was made entitled to this 52½ percent share.

The Federal Petitioners assert that Section 28(b) of the Alaska Statehood Act "merely substituted the State for the Territory of Alaska, which, by earlier enactments, enjoyed 52½ percent of the mineral revenues distributed under the 1920 Act, in addition to the then usual 37½ percent returned to every State." Federal Petitioners' Petition, p. 34.

However, the legislative history of the Section 28(b) amendment to Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, shows that it was much more than just a technical amendment.

> In order to understand clearly the necessity for certain different provisions in the Alaska statehood bill, it is advisable to have in mind some of the basic facts about Alaska's peculiar situation.
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> Over 99 percent of the land area of Alaska is owned by the Federal Government. The committee believes that such a condition is unprecedented at the time of the admission of any of the existing States.
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> The public land laws of the United States, including those providing for the disposal of the public domain to private individuals, theoretically are generally applicable to Alaska. The committee, however, found that the beneficial effects of these

laws have been and are vitiated to a large degree by the Federal policies of the last half century, of withdrawing from public use many of the more valuable resources of the Territory through the creation of tremendous Federal reservations for the furtherance of the programs of the various Federal agencies. Thus, approximately 95 million acres—more than one-fourth of the total area of Alaska—is today enclosed within various types of Federal withdrawals or reservations. Much of the remaining area of Alaska is covered by glaciers, mountains, and worthless tundra. Thus it appeared to the committee that this tremendous acreage of withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people.

* * *

As previously noted, tremendous acreages of land have been tied up in the status of Federal reservations and withdrawals for various purposes. The committee feels strongly that this practice has been carried to extreme lengths in Alaska, to a point which has hampered the development of such resources for the benefit of mankind. As a result, a long list of potential basic industries in the Territory, including the forest industries, hydroelectric power, oil and gas, coal, various other minerals, and the tourist industry, can exist in Alaska only as tenants of the Federal Government, and on the sufferance of the various Federal agencies. The committee considers that to be an unhealthy situation.

The failure of these industries to grow under such a restrictive policy is a proof of its unwisdom. The committee feels that this policy must be changed if statehood for Alaska is to be a success.

> In its approach to the statehood issue, the committee has attempted to make a start toward such a change by various specific provisions in this bill.

H.R. Rep. No. 624, 85th Cong., 2d Sess., reprinted in 2 [1957] U.S. Code & Cong. Admin. News 2933, 2937-2940. One of those specific provisions was the amendment to Section 35 of the Mineral Leasing Act, 30 U.S.C. § 191, contained in Section 28(b) of the Statehood Act.

As noted by the Federal Petitioners, substantial volumes of oil and gas are believed to underlie several of the 17 other wildlife refuges in Alaska. See Federal Petitioners' Brief, p. 4 n. 4. All of these refuges are on public lands otherwise subject to leasing under the Mineral Leasing Act, 30 U.S.C. § 181. *See* Affidavit of Lynn A. Greenwalt, Appendix A to Federal Petitioners' Brief, pp. 1a-2a.

Again, the words of *United States* v. *American Trucking Associations,* 310 U.S. 534, 544 (1940) are appropriate: "A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to settled policy, 'excepting as a different purpose is plainly shown." (Footnote omitted.) This seems particularly appropriate where construing the word "minerals" in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, as encompassing mineral revenues from wildlife refuges on public lands in Alaska would defeat Alaska's 90 percent share of such revenues only upon the happening of the very event that Section 28(b) of the Statehood Act was attempting to remedy, federal withdrawal of those lands.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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